

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement Operations</u> STATEMENT NUMBER <u>5.13</u>
<b>SUBJECT: ANNULMENT/PARDON INVESTIGATIONS</b>  <b>PROPONENT: <u>Michael McAlister, Director</u></b> <i>Name/Title</i> <u>Field Services</u> <u>271-5652</u> <i>Office Phone #</i>	EFFECTIVE DATE <u>04/30/14</u>  REVIEW DATE <u>04/30/15</u>  SUPERSEDES PPD# <u>5.13</u>  DATED <u>04/01/13</u>
ISSUING OFFICER:    <u>William Wrenn Commissioner</u>	DIRECTOR'S INITIALS _____  APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

I. PURPOSE:

To provide the sentencing court/Attorney General's Office with a report that includes information regarding the petitioner's criminal history and any other information that may aid the authority charged with making a determination on the petition. The report shall include a review of the updated criminal record, and compliance with the sentencing order.

II. APPLICABILITY:

All staff within the Department of Corrections (DOC), particularly Offender Records and the Division of Field Services.

III. POLICY:

It is the policy of the DOC to conduct annulment investigations assigned by the Court in accordance with RSA 651:5 (Attachment 1). The criteria for eligibility is listed in RSA 651:5. The Department of Corrections shall conduct pardon investigations assigned by the New Hampshire Office of the Attorney General in accordance with RSA 4:22 (Attachment 2). Pardon requests will be completed using the synopsis template (Attachment 3). Annulment and pardon investigations will be completed and filed with the appropriate authority as ordered by the requesting authority.

The Department of Corrections maintains offender information to manage offenders who are incarcerated or under active supervision. The Department of Safety maintains official criminal records. If DOC staff receives an inquiry about a person's criminal record, they are authorized to provide information regarding the crime or sentence for which they are currently incarcerated or under supervision. Any inquiry for historical records should be referred to the Department of Safety.

IV. PROCEDURES:

## A. Annulment Investigations:

1. The assigned PPO shall forward a letter (Attachment 4) to the petitioner advising of the investigation and the need for a written response. The letter will indicate that the DOC shall charge the applicant a \$100 annulment fee in accordance with RSA 651:5. No further

investigation efforts should be made until the fee is received. The fee will be forwarded to the Collections Unit. Annulment fees must be paid in full prior to the investigation. If the investigating officer determines the applicant is indigent, the officer shall obtain a signed financial affidavit. The fee reduction or waiver will be approved by the Chief PPO. Payments may be made by certified bank check or money order. The fee is waived if an arrest has resulted in a finding of not guilty, or the case was dismissed or not prosecuted. If there is one annulment investigation for multiple charges, the fee will be \$100. The Collections Unit will enter the payment into CORIS, and notify the investigating officer in writing when the fee is received. If any other annulment documents are received at the Collections Unit, they will be forwarded to the PPO.

2. The investigation format shall consist of the following categories (see Attachment 5)
  - a. Court – Sentencing authority in the instant offense;
  - b. Docket Number;
  - c. Petitioner's name and date of birth;.
  - d. Offense(s) cited in the petition and plea;
  - e. Date of conviction;
  - f. Disposition Order made in the cited case;
  - g. Compliance with NH RSA 651:5 (Y/N);
  - h. Explanation (if needed);
  - i. Record check – List all states/types and attach copies, if requested; and
  - j. The petitioner's written response will be attached to the report, if applicable.
3. If no fee or response is received from the petitioner, the investigating PPO shall notify the Court that a report cannot be completed.
4. The PPO must be aware that some statutes have established special annulment criteria for certain offenses which may differ from the criteria set forth in RSA 651:5.

B. Pardon Investigations

1. All requests for pardon investigations, pursuant to RSA 4:22, shall be forwarded from the Attorney General's Office to the Department of Corrections.
2. Requests for pardon investigations and/or synopses will be forwarded to the appropriate district offices or, in the case of an inmate, to Offender Records. The Offender Records office will return the completed synopsis to the Commissioner's Office.
3. For parolees, the District Office will have the assigned PPO forward a letter to the petitioner advising them of the required investigation and arrange for an interview.
4. The investigation format shall consist of the following categories (Attachment 6):
  - a. Offense  
Statement describing the original offense to include the date the offense occurred, the sentencing court and any other relevant information.
  - b. Level of Compliance  
The PPO should determine if the petitioner has fulfilled all the obligations/conditions and financial requirements of the sentence and briefly summarize the petitioner's compliance and performance. A statement describing the petitioner's involvement, if any, in subsequent arrests, convictions, prosecutions since the date of the original conviction must be included. Updated record checks or other relevant documents should be obtained and attached to the report. If it is determined that subsequent offenses and/or Court involvement has occurred, all relevant documents should be obtained and a brief synopsis included.
  - c. Biographical Statement:  
The investigating PPO should provide current biographical information with a focus on updating the Commissioner on significant areas to include residence, marital status, employment, education or any other significant events that have occurred since the original conviction. The petitioner's reasons for requesting the pardon should be included as well as any objections to the petition from the police, County Attorney, or Attorney General's Office.
  - d. Assessment  
The PPO should summarize the relevant issues in the petition and assess the petition and

the petitioner's stability and level of functioning since the conviction. Issues relative to public safety should be given primary consideration.

e. Recommendation

The investigating PPO shall make a specific recommendation indicating whether or not the pardon should be granted. The recommendation should be based on the verification of the information put forth by the petitioner, the rationale for the petition and the PPO's professional judgment.

f. Sources

Clearly identify all referral sources.

g. Attachments (if necessary).

5. The completed investigation shall be reviewed by the Chief PPO for completeness, accuracy, etc. and forwarded to the Office of the Director.
6. The Director shall review the investigation and submit a brief recommendation along with the completed report to the Commissioner's Office.
7. The Commissioner will review and forward to the Executive Council. A copy of the report shall also be forwarded to the prosecuting attorney.

- V. In accordance with RSA 651:5, a person whose record is annulled shall be treated in all respects as if she/he had never been arrested, convicted or sentenced, except that, upon conviction of any crime committed after the order of annulment has been entered, the prior conviction may be considered by the court in determining the sentence to be imposed, and may be counted toward habitual offender status under RSA 259:39. The Department of Corrections is authorized to maintain arrest and conviction records and to communicate information regarding the annulled record of arrest or conviction to other law enforcement officers for legitimate investigative purposes or in any civil suit arising out of the facts of the arrest, or to the Police Standards and Training Council solely for the purpose of assisting the Council in determining the fitness of an individual to serve as a law enforcement officer, in any of which cases such information shall not be disclosed to any other person.

- VI. Staff should not disseminate historical criminal records or information regarding annulments. If DOC staff receives an inquiry about a person's criminal record, they are authorized to provide information regarding the crime or sentence for which they are currently incarcerated or under supervision. Any inquiry for historical records should be referred to the Department of Safety.

## REFERENCES:

Standards for the Administration of Correctional Agencies  
Second Edition. Standards

Standards for Adult Correctional Institutions  
Third Edition. Standards

Standards for Adult Community Residential Services  
Fourth Edition. Standards

Standards for Adult Probation and Parole Field Services  
Third Edition. Standards

## Other

RSA 651:5 & RSA 4:22

Attachments

MM/clr

**651:5 Annulment of Criminal Records. –**

I. Except as provided in paragraphs V-VIII, the record of arrest, conviction and sentence of any person may be annulled by the sentencing court at any time in response to a petition for annulment which is timely brought in accordance with the provisions of this section if in the opinion of the court, the annulment will assist in the petitioner's rehabilitation and will be consistent with the public welfare. The court may grant or deny an annulment without a hearing, unless a hearing is requested by the petitioner.

II. Any person whose arrest has resulted in a finding of not guilty, or whose case was dismissed or not prosecuted, may petition for annulment of the arrest record or court record, or both, at any time in accordance with the provisions of this section.

III. Except as provided in RSA 265-A:21 or in paragraphs V and VI, any person convicted of an offense may petition for annulment of the record of arrest, conviction, and sentence when the petitioner has completed all the terms and conditions of the sentence and has thereafter been convicted of no other crime, except a motor vehicle offense classified as a violation other than driving while intoxicated under RSA 265-A:2, I, RSA 265:82, or RSA 265:82-a for a period of time as follows:

- (a) For a violation, one year, unless the underlying conviction was for an offense specified under RSA 259:39.
- (b) For a class B misdemeanor except as provided in subparagraph (f), 3 years.
- (c) For a class A misdemeanor except as provided in subparagraph (f), 3 years.
- (d) For a class B felony except as provided in subparagraph (g), 5 years.
- (e) For a class A felony, 10 years.
- (f) For sexual assault under RSA 632-A:4, 10 years.
- (g) For felony indecent exposure or lewdness under RSA 645:1, II, 10 years.

IV. If a petition for annulment is denied, no further petition shall be brought more frequently than every 3 years thereafter.

V. No petition shall be brought and no annulment granted in the case of any violent crime, of any crime of obstruction of justice, or of any offense for which the petitioner was sentenced to an extended term of imprisonment under RSA 651:6.

VI. If a person has been convicted of more than one offense, no petition for annulment shall be brought and no annulment granted:

- (a) If annulment of any part of the record is barred under paragraph V; or
- (b) Until the time requirements under paragraphs III and IV for all offenses of record have been met.

VI-a. A conviction for an offense committed under the laws of another state which would not be considered an offense under New Hampshire law, shall not count as a conviction for the purpose of obtaining an annulment under this section.

VII. If, prior to disposition by the court of a petition for annulment, the petitioner is charged with an offense conviction for which would bar such annulment under paragraph V or VI(a) or would extend the time requirements under paragraphs III, IV and VI(b), the petition shall not be acted upon until the charge is disposed.

VIII. Any petition for annulment which does not meet the requirements of paragraphs III-VI shall be dismissed without a hearing.

IX. When a petition for annulment is timely brought, the court shall require the department of corrections to report to the court concerning any state or federal convictions, arrests or prosecutions of the petitioner and any other information which the court believes may aid in making a determination on the petition. The department shall charge the petitioner a fee of \$100 to cover the cost of such investigation unless the petitioner demonstrates that he or she is indigent, or has been found not guilty, or the case has been dismissed or not prosecuted in accordance with paragraph II. The department of safety shall charge the successful petitioner a fee of \$100 for researching and correcting the criminal history record accordingly, unless the petitioner demonstrates that he or she is indigent, or has been found not guilty, or the case has been dismissed or not prosecuted in accordance with paragraph II. The court shall provide a copy of the petition to the prosecutor of the underlying offense and permit them to be heard regarding the interest of justice in regard to the petition.

X. Upon entry of an order of annulment:

(a) The person whose record is annulled shall be treated in all respects as if he or she had never been arrested, convicted or sentenced, except that, upon conviction of any crime committed after the order of annulment has been entered, the prior conviction may be considered by the court in determining the sentence to be imposed, and may be counted toward habitual offender status under RSA 259:39.

(b) The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order, and that its effect is to annul the arrest, conviction, and sentence, and shall notify the state police criminal records unit, the prosecuting agency, and the arresting agency.

(c) The court records relating to an annulled arrest, conviction, or sentence shall remain public documents. However, the court shall clearly identify on the file and in the electronic record that the arrest or conviction and sentence have been annulled.

(d) The state police criminal records unit shall add an entry to the subject's record of arrest, conviction, or sentence in the criminal history database stating that the record has been annulled.

(e) The arresting agency and the prosecuting agency shall clearly identify in their respective files and in their respective electronic records that the arrest or conviction and sentence have been annulled.

(f) In any application for employment, license or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"

XI. Nothing in this section shall affect any right:

(a) Of the person whose record has been annulled to appeal from the conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense; or

(b) Of law enforcement officers to maintain arrest and conviction records and to communicate information regarding the annulled record of arrest or conviction to other law enforcement officers for legitimate investigative purposes or in defense of any civil suit arising out of the facts of the arrest, or to the police standards and training council solely for the purpose of assisting the council in determining the fitness of an individual to serve as a law enforcement officer, in any of which cases such information shall not be disclosed to any other person.

XII. [Repealed.]

XIII. As used in this section, "violent crime" means:

(a) Capital murder, first or second degree murder, manslaughter, or class A felony negligent homicide under RSA 630;

(b) First degree assault under RSA 631:1;

(c) Aggravated felonious sexual assault or felonious sexual assault under RSA 632-A;

(d) Kidnapping or criminal restraint under RSA 633;

(e) Class A felony arson under RSA 634:1;

(f) Robbery under RSA 636;

(g) Incest under RSA 639:2, III or endangering the welfare of a child by solicitation under RSA 639:3, III; or

(h) Any felonious child pornography offense under RSA 649-A.

XIV. As used in this section, "crime of obstruction of justice" means:

(a) Tampering with witnesses or informants under RSA 641:5 or falsifying evidence under RSA 641:6; or

(b) Any felonious offense of obstructing governmental operations under RSA 642.

XV. A petition for annulment of any record of arrest, conviction, and sentence authorized by this section may be brought in the supreme court with respect to any such record in the supreme court, provided that no record in the supreme court relating to an opinion published in the New Hampshire Reports may be annulled.

XVI. A journalist or reporter shall not be subject to civil or criminal penalties for publishing or broadcasting:

(a) That a person had a criminal record that has been annulled, including the content of that record.

(b) That a person has a criminal record, including the content of such record, without reporting that the record has been annulled, if the journalist or reporter does not have knowledge of the annulment.

XVII. No person or entity, whether public or private, shall be subject to civil or criminal penalties for not removing from public access or making corrections to a report or statement that a person has a criminal record, including the content of such record, if thereafter the criminal record was annulled. This provision shall apply to any report or statement, regardless of its format.

**Source.** 1971, 518:1. 1985, 205:2. 1986, 49:1; 189:1. 1988, 238:6. 1991, 159:1. 1992, 269:11. 1994, 224:1. 1998, 325:2. 2002, 269:1. 2006, 163:3, eff. Jan. 1, 2007; 260:34, eff. Jan. 1, 2007. 2008, 62:4, eff. July 20, 2008; 104:1, eff. Jan. 1, 2009. 2009, 144:131, eff. July 1, 2009. 2011, 219:1-3, eff. June 28, 2011. 2012, 249:1, 2, eff. Jan. 1, 2013.

**§ 4:22. Commissioner of Corrections to Report on.**

In all cases where the petition is for the pardon of a person serving a sentence in the state prison, the commissioner of corrections shall make a report upon the petition before it is referred to the council.

**RESPONSE TO MOTION TO SUSPEND SENTENCE/  
PARDON INVESTIGATION**

Docket # \_\_\_\_\_

DATE \_\_\_\_\_

Clerk of Court \_\_\_\_\_

RE: \_\_\_\_\_ NHSP # \_\_\_\_\_ RECEIVED: \_\_\_\_\_

This synopsis is an accurate report of the information presently contained in subject's offender record at the New Hampshire State Prison. Presentence Report filed in above docket is incorporated by reference. Criminal record and mental health data (where appropriate) are attached to original file in court records.

PRESENTLY HOUSED: \_\_\_\_\_

PRESENT CRIME: \_\_\_\_\_

\_\_\_\_\_

PRIOR NEW HAMPSHIRE STATE PRISON INCARCERATIONS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PAROLE VIOLATIONS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PRESENT MINIMUM PAROLE ELIGIBILITY DATE: \_\_\_\_\_

MAXIMUM RELEASE DATE: \_\_\_\_\_

COURT ORDER/RECOMMENDATIONS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CASE PLAN REQUIREMENTS/RECOMMENDATIONS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATUS OF REQUIREMENTS/RECOMMENDATIONS: \_\_\_\_\_

---

---

---

OTHER PERTINENT INFORMATION: \_\_\_\_\_

---

---

---

---

DISCIPLINARY RECORD: \_\_\_\_\_

---

---

---

---

#### Offender Records

**cc:** County Attorney  
Inmate  
File



## Office Letterhead

Date

Name

Address

City, State, Zip

Dear ,

Re: Court, Annulment #

The Court has ordered this office to complete an investigation regarding your Annulment Petition. Per RSA 651:5, IX; **we must collect a \$100.00 fee from you before we can begin our investigation.** If the arrest you are seeking to annul resulted in a not guilty finding, or your case was dismissed or not prosecuted, you are not required to pay the \$100.00 fee. Send a **money order** or **certified bank check only** (personal checks will not be accepted unless it is from an Attorney's business account). Make payable to NHDOC (New Hampshire Department of Corrections) and mail to the NHDOC Collections Unit, PO Box 3356, Concord, NH 03302 along with this *completed* questionnaire. **Please reply within two weeks or the Court will be notified that you did not respond to our inquiry and we will close interest in this investigation.**

Please answer the following questions:

- Have you ever used a name (i.e. maiden or alias) or birth date other than the one listed on your Annulment Application? ☐ Yes ☐ No. If yes, please list any other name or birth date you have used. \_\_\_\_\_
- Have you ever been arrested or convicted in a state other than New Hampshire for ANY offense? ☐ Yes ☐ No. If yes, list all states where you have been arrested for or convicted of any offense. \_\_\_\_\_
- Do you have any other pending annulment petitions in any other Court(s)? ☐ Yes ☐ No If yes, please list other Court(s): \_\_\_\_\_

Sign and Date \_\_\_\_\_

Also, please provide documentation that you complied with all *special* Court orders. Examples are: Orders to complete anger management counseling, domestic violence counseling, substance abuse treatment, community service, or payment of restitution.

Sincerely,

Probation/Parole Officer

NEW HAMPSHIRE DEPARTMENT OF CORRECTIONSANNULMENT INVESTIGATION

COURT: \_\_\_\_\_

DOCKET #(S): \_\_\_\_\_

NAME: \_\_\_\_\_ D.O.B.: \_\_\_\_\_

OFFENSE: \_\_\_\_\_ DATE OF CONVICTION: \_\_\_\_\_

DISPOSITION: \_\_\_\_\_

\_\_\_\_\_

COMPLIANCE WITH NEW HAMPSHIRE RSA 651:5: YES ☐ NO ☐

EXPLANATION (IF ANY): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RECORD CHECK: (SEE ATTACHED)

N.H. MOTOR VEHICLE:	<input type="checkbox"/>	[record attached]	<input type="checkbox"/>
N.H. CRIMINAL:	<input type="checkbox"/>	[record attached]	<input type="checkbox"/>
OTHER:	<input type="checkbox"/>		

\_\_\_\_\_  
DATE\_\_\_\_\_  
PROBATION/PAROLE OFFICER

**FIELD SERVICES PARDON INVESTIGATION**

DATE: \_\_\_\_\_

DOCKET #(S): \_\_\_\_\_

NAME: \_\_\_\_\_ D.O.B.: \_\_\_\_\_

1. Offense/Criminal History \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Compliance With Sentence \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Biographical History \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Evaluation/Analysis \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Recommendation \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Sources \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_